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Reply Brief of Durment for P. C.

Supreme Court of the United States.

Filed Mar. 8, 1902.

OCTOBER TERM, 1901.

No. 240.

SECURITY TRUST COMPANY, as Administrator of the estate of Sumner W. Matteson, deceased,

Plaintiff in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah,

Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

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REPLY BRIEF OF PLAINTIFF IN ERROR.

Counsel for defendant in error in their brief have seen fit to go outside the record and state some things, and insinuate others, relative to the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, which have no foundation in the record in that case, nor in fact outside the record, but exist

only in the imagination of counsel for defendant in error, which requires a statement by us in reply.

The issue in that case was not in any sense a feigned issue. The Supreme Court of Minnesota was not imposed upon. Neither defendant in error, the counsel, nor any other person was kept in ignorance of the proceeding. The action from beginning took the usual and only possible course of such litigation, was contested vigorously and publicly argued in both courts. Likewise the fact that the action was pending and of the argument of the cause in the District Court were published in the daily newspapers in the city where counsel for defendant in error reside. The fact that the relator is a brother to Charles D. Matteson is immaterial. No one except defendant in error or a member of the Matteson family could bring the action, and defendant in error would not do so but was seeking to hold the relator personally liable for the claim. There was ample time after the decision of the Supreme Court became public property, in which counsel could have called the attention of the court to the alleged imposition which counsel now assert had been practiced upon the court and could have applied for a re-argument and an opportunity to be heard. So far as the misnomer in the title as placed on the calendar is concerned, we have this to say: The case was entered in the Supreme Court under its proper title, as the decision of the Supreme Court shows.. Neither counsel had any control of the printing of the calendar and the mis-spelling was that of the clerk or the printer, probably the printer.

It is a little strange that all the courts of Minnesota should be so stupid as to allow counsel to so mislead and impose upon them, when counsel for defendant in error could so readily discover the imposition. The fact that counsel do not attempt to meet the decision, nor its reasoning, but simply to discredit it by such baseless charges is significant that in their opinion the decision is against them and unanswerable.

The facts are these: The counsel for defendant in error had filed in the probate court a certified copy of the judgment now before this court. Then, instead of applying to the probate court for payment of the judgment, *as they say on page 4 of their brief they should do*, they commenced an action in the federal court against the relator in the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, to recover from him as an heir of the deceased. Thereupon said relator attempted, in accordance with the theory of counsel for defendant in error and the decision of the Circuit Court of Appeals, to have the probate court compel the administrator to take steps to pay the judgment. The probate court refused to act, taking the ground that the administration was closed, the administrator *functus officio* and the court without jurisdiction. Thereupon the relator applied to the District Court for a writ of mandamus, which being denied he appealed to the Supreme Court. The case went before the District and Supreme Courts and was heard in both courts in the usual and the only way possible. The appellant urged upon the Supreme Court of the state the

decision of the Circuit Court of Appeals, and made quite as elaborate and strong a brief on the questions involved as counsel for defendant in error made for the Circuit Court of Appeals. In that brief, not only the decision of the Circuit Court of Appeals in this case, but the other authorities cited by defendant in error in their brief in that court were urged upon the Supreme Court of Minnesota. Nothing was concealed from the Supreme Court of the state and both sides of the question involved were as fully and fairly presented to that court as in the Circuit Court of Appeals.

We file herewith, as an exhibit A to this reply brief, the printed record and briefs on which that decision was rendered in the Supreme Court of the State. If it be material, this court can determine for itself from an examination thereof, whether the Supreme Court of Minnesota was imposed upon in that case.

The counsel for defendant in error urges that the opinion in that case is entitled to no weight in the Supreme Court of the United States, because Judges Lochren and Sanborn are familiar with the laws of Minnesota.

However, familiar Judges Lochren and Sanborn may be with the laws of Minnesota, the Supreme Court of Minnesota must be conceded an equal familiarity therewith and its judgment must be accorded greater weight than theirs as to what is the law of Minnesota. Neither the controversy involved in that case nor the parties thereto were then before the federal court. Not only had the state court

the right but it was its duty in that case to expound the law of Minnesota. It announced no new doctrine in that decision, but if it had done so it was an authoritative exposition of the law of Minnesota and ought to be recognized by this court.

Gen. St. 1894, Sec. 4532 referred to by counsel for defendant in error has no application to the questions involved. It has reference to the payment of claims and legacies in the course of administration and before final settlement of the estate.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.